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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,871	10/12/2001	Phillip Hugh Davies	Dav01-001	2177

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EXAMINER

MATHEW, FENN C

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 04/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/976,871

Applicant(s)

DAVIES, PHILLIP HUGH

Examiner

Fenn Mathew

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-26 and 49-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 and 49-63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election with traverse of the species of Figure 2F in Paper No. 6 is acknowledged. The traversal is on the ground(s) that patent applications can contain more than one species. This is not found persuasive because 37 CFR 1.141 also states "...more than one species of an invention, not to exceed a reasonable number, may be specifically claimed..." In Paper No. 5, examiner identified 23 different embodiments, which is deemed to exceed a reasonable number.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 5, 13, 15, and 23 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Wilson (U.S. Patent No. 4,218,057). Referring to claim 1, Wilson discloses an exercise device that is held and comprised of two units, the units each comprised of a handle (13), and an elongated first element (21) having a first loop (see fig. 1).

4. Referring to claim 2, Wilson discloses a loop forming means (knot) for forming the first loop from a portion of the first elongated element.

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5. Referring to claim 3, Wilson discloses a loop forming means for forming the first loop, the loop forming means being located inside the handle. (See fig. 2-3).
6. Referring to claim 5, Wilson discloses the first loop being formed by attaching a first section of the elongated first element to a second section of the elongated second element.
7. Referring to claim 13, as best understood, Wilson discloses the handle being a portion of the first element.
8. Referring to claim 15, Wilson discloses the elongated element comprised of a first length of flexible material attached to the handle, the first length of flexible material forming a loop.
9. Referring to claim 23, Wilson discloses a loop forming means is comprised of a knot.
10. Claims 1-2, 4, 7-10, 20-22, 24-26, 49-50, 53, and 59-60 are rejected under 35 U.S.C. 102(b) as being anticipated by Cotita (U.S. Patent No. 5,087,220). Cotita discloses an exercising device comprising a unit to be held in a hand of a user, the unit comprising a handle (12), an elongated first element attached to the handle, the elongated first element having a first loop.
11. Referring to claims 2 and 4, Cotita discloses the device further including loop forming means (40) located outside the handle.
12. Referring to claim 7, Cotita discloses the first loop formed by attaching a first portion of the elongated first element to a second portion of the elongated first element, with a section of the first loop inside a portion of the handle (see fig. 1).

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13. Referring to claim 8, Cotita discloses the first loop formed by attaching a first portion of the elongated first element to a second portion of the elongated first element, with a section of the first loop inside a portion of the handle (see fig. 1), and an elongated second element attached to the elongated first element.
14. Referring to claim 9, Cotita discloses the elongated first element comprised of two or more chords.
15. Referring to claim 10, Cotita discloses loop-forming means (40) for forming a loop from a portion of the elongated first element, the loop forming means located outside the handle, the elongated first element comprised of two chords.
16. Referring to claim 20, Cotita discloses the exercise having a plurality of loops, the loops attached to the handle and the first elongated element.
17. Referring to claim 21, Cotita discloses the unit further including an elongated second element (14) attached to the elongated first element.
18. Referring to claim 22, Cotita discloses a second elongated element having a second loop (15), the elongated second element attached to the first elongated element.
19. Referring to claim 24, Cotita discloses the handle comprised of a portion of the first element.
20. Referring to claim 25, Cotita discloses the elongated first element partially covered by a tubular element (22).
21. Referring to claim 26, Cotita discloses the elongated first element comprised of a first cord forming a loop and attached to the handle by a piece (28) having two holes through with the first cord passes, a portion of the loop inside the handle.

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22. Referring to claim 49, Cotita discloses the first loop formed by a first knot (40), with a second element attached to the first loop by the first knot.
23. Referring to claim 50, Cotita the first loop formed by a first knot with a second element attached to the first loop by the first loop, and a second knot (see fig. 1).
24. Referring to claim 53, Cotita discloses an exercising device comprising a unit comprised of a handle, an elongated first element having a loop formed by a first loop forming device, an elongated second element attached indirectly to the handle.
25. Referring to claim 59, Cotita discloses an exercise device wherein the first element is comprised of two chords.
26. Referring to claim 60, Cotita discloses a device held in a hand of a user, the units comprising a handle, a first chord attached to the handle, a first loop formed by attaching a first section of the chord to a second section of the chord, using a first loop forming device, the first loop forming device being a first knot, a second elongated element attached to the first loop by the first knot, and a second knot, the second elongated element comprised of the first chord.

***Claim Rejections - 35 USC § 103***

27. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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28. Claims 6, 11-12, 14, 16-19, 51-52, 54-58, and 61-63 rejected under 35 U.S.C. 103(a) as being unpatentable over Cotita (U.S. Patent No. 5,087,220). Cotita has disclosed the claimed invention except for minor modifications. Features such as specific distances between elements and lengths of elements are considered matters of simple design choice within the level of the skilled artisan. Likewise limitations regarding types of loop-forming means and shapes of the tubular member used are considered matters of simple design choice, as the skilled artisan would choose means and appropriate shapes based on suitability. Referring to limitations involving having a first and second portion, with the second portion forming the loop, Cotita discloses the first element forming a loop with an attached second element. The limitation is considered a matter of design choice as it involves merely rearranging the parts of the invention, and the device of Cotita would function equally well absent unexpected results. *In re Japikse*, 86 USPQ 70.

29. Referring to claim 14, Cotita discloses the claimed invention except for having a detachable loop forming means. The feature of making a structure removable is considered a matter of design choice, and inherently, if attached using knots connectors from each unit are capable of being attached together.

### ***Conclusion***

30. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kushner

U.S. Patent No. 6,524,226

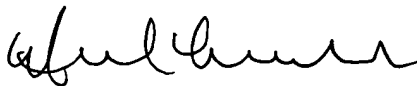
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Hauck	U.S. Patent No. 6,206,537
Kuhnsman et al.	U.S. Patent No. 4,513,692
Jones	U.S. Patent No. 5,895,341
Feciura et al.	U.S. Patent No. 5,749,812
Gingras	U.S. Patent No. 3,762,704
Wilson	U.S. Patent No. 4,109,906
Blake	U.S. Patent No. 6,234,662
Forgione	U.S. Patent No. D334,605

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



**NICHOLAS D. LUCCHESI**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3700**

*Ycm*  
fcm

April 4, 2003